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4 UNITED STATES DISTRICT COURT

5 DISTRICT OF NEVADA

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7 MILAN KJALASAN,
8 v.
9 USA, et al.,
10 Defendants.

Case No. 2:15-cv-00130-GMN-PAL
REPORT OF FINDINGS AND
RECOMMENDATION
(IFP App – Dkt. #1)

12 Plaintiff Milan Kjalsan is proceeding in this action pro se. He has requested authority
13 pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis and submitted a complaint. This
14 matter was referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A)
15 and (B) and Local Rules IB 1-3 and 1-4.

16 Plaintiff has submitted the affidavit required by § 1915(a), but it does not appear Plaintiff
17 qualifies to proceed in forma pauperis. Although he indicates he is not receiving a stable
18 income, he reports having \$8,000.00 in cash or a checking or savings account. In addition, he
19 has not responded to questions 5, 6, 7, or 8 on the Application, and therefore, the court cannot
20 determine whether or not Plaintiff qualifies to proceed in forma pauperis.

21 However, even if Plaintiff did qualify to proceed in forma pauperis, his complaint does
22 not state a claim upon which relief can be granted. Once the court allows a plaintiff to proceed
23 in forma pauperis, the court must screen a complaint pursuant to § 1915(a). Federal courts are
24 given the authority dismiss a case if the action is legally “frivolous or malicious,” fails to state a
25 claim upon which relief may be granted, or seeks monetary relief from a defendant who is
26 immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under
27 § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing
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1 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
 2 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
 4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
 5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
 6 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and
 7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
 8 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not
 9 require detailed factual allegations, it demands “more than labels and conclusions” or a
 10 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 11 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all
 12 well-pled factual allegations contained in the complaint, but the same requirement does not apply
 13 to legal conclusions. *Id.* Mere recitals of the elements of a cause of action, supported only by
 14 conclusory allegations, do not suffice. *Id.* at 679-80. Secondly, where the claims in the
 15 complaint have not crossed the line from plausible to conceivable, the complaint should be
 16 dismissed. *Twombly*, 550 U.S. at 570.

17 Here, Plaintiff’s complaint alleges that Plaintiff is “experiencing a rude and miserable
 18 abuse of [his] privacy in a period of a few years, starting in Macedonia, continuing on any
 19 location after including Afghanistan, and in USA executed by a LEGAL USA and Macedonian
 20 Government Agencies.” Complaint at 1:18-21. Plaintiff has not stated a basis for the court’s
 21 jurisdiction, nor has he alleged any cognizable claim, or set forth any facts to support that claim.
 22 Additionally, Plaintiff has not requested any relief other than stating he “need[s] a resolution of
 23 this situation as soon as possible expecting that in the legal procedure.” *Id.* at 1:22-24.

24 Federal courts are courts of limited jurisdiction and possess only that power authorized
 25 by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Plaintiff has not
 26 alleged federal jurisdiction exists in this case. No federal question jurisdiction pursuant to 28
 27 U.S.C. § 1331 exists. Plaintiff has also not asserted diversity jurisdiction pursuant to 28 U.S.C.
 28 § 1332.

1 Additionally, the allegations in the complaint lack an arguable basis in law and fact, and
2 the complaint should be dismissed as frivolous. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).
3 A finding of frivolousness is warranted where the facts alleged are “clearly baseless.” *Denton v.*
4 *Hernandez*, 504 U.S. 25, 32 (1992); *see also Ashcroft v. Iqbal*, 556 U.S. at 678. A court must not
5 dismiss a complaint simply because the set of facts presented by the plaintiff appears to be
6 unlikely; however, a complaint must allege facts “to state a claim that is plausible on its face.”
7 *Twombly*, 550 U.S. at 570. Plaintiff has not set forth any specific claim in the complaint, nor has
8 he named any particular defendant, or stated when any of this alleged conduct occurred. Because
9 Plaintiff’s complaint does not set forth a plausible claim, even if he did qualify to proceed in
10 forma pauperis, it would be recommended that the complaint be dismissed with prejudice.

Leave to amend would not be granted because Plaintiff's claims cannot be cured by the allegation of additional facts. *See Lopez v. Smith*, 203 F.3d 1122, 1126, 1131 (9th Cir. 2000) (en banc) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995) (leave to amend should be granted unless amendment would be futile)).

15 || Accordingly,

IT IS RECOMMENDED:

- 17 1. Plaintiff's Application to Proceed In Forma Pauperis (Dkt. #1) be DENIED.
18 2. The Clerk of Court be directed to file the complaint but not issue summons.
19 3. Plaintiff's complaint be DISMISSED for failure to state a claim upon which relief can
20 be granted.

21 Dated this 27th day of January, 2015.

Peggy A. Teer
PEGGY A. TEER
UNITED STATES MAGISTRATE JUDGE

NOTICE

26 These findings and recommendations are submitted to the United States District Judge
27 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
28 after being served with these findings and recommendations, any party may file written

1 objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing
2 to object to the findings and recommendations of a magistrate judge shall file and serve *specific*
3 *written objections* together with points and authorities in support of those objections, within
4 fourteen days of the date of service of the findings and recommendations. The document should
5 be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties
6 are advised that failure to file objections within the specified time may waive the right to appeal
7 the district court’s order. *See Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and
8 authorities filed in support of the specific written objections are subject to the page limitations
9 found in LR 7-4.

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